In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1654 of 2001 (O&M)
Date of Decision:December 07, 2009

Balwan Singh and another

---Petitioners

versus

State of Punjab

---Respondent

Coram: HONBLE MR. JUSTICE GURDEV SINGH

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Present: Mr.Veneet Soni, Advocate,
for the petitioners

Mr.A.P.S.Mann,Sr. Deputy Advocate General,
Punjab.

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GURDEV SINGH, J.

Balwan Singh and Nirmal Singh-petitioners-accused have preferred this revision against the judgment dated 3.11.2001 passed by Shri J.S.Bhatia, Additional Sessions Judge, Sangrur, who dismissed the appeal which was directed against the judgment dated 28.1.2000 passed by Sh. Harbans Singh, Judicial Magistrate Ist Class, Sunam, vide which he convicted and sentenced the petitioners for the offences under Sections 323, 325/34 of the Indian Penal Code and sentenced them as under:-

" 1.Balwan Singh convict is sentenced u/s 325 IPC to undergo rigorous imprisonment for the period of two years, with fine of

Rs. 1,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for four months .

2. Nirmal Singh convict is sentenced u/s 325/34 IPC to undergo one year rigorous imprisonment with fine of Rs. 500/-. In default of payment with fine, he shall further undergo rigorous imprisonment for two months.
3. Nirmal Singh convict is also sentenced u/s 323 IPC to undergo rigorous imprisonment for nine months, whereas, convict Balwan Singh is sentenced to undergo rigorous imprisonment for six months u/s 323/34 IPC."

In brief, the facts are that on the eve of Diwali of the year 1997, Ram Niwas complainant , PW-3, after purchasing crackers from the shop of Raju was going back to his house, while firing those crackers, when without any reason, he was challenged by the petitioners. That dispute was settled by the respectables of the village, but the petitioners had been nourishing a grudge against the complainant. On 21.3.1998, at about 3.30 p.m., the complainant was going to his fields with his niece – Bittu in his arms. When he reached near the house of the petitioners, they were present at that place and was abused by Balwan Singh. He continued to proceed towards his fields. Balwan Singh exhorted the other petitioner-Nirmal Singh to teach a lesson to him for bursting the crackers near their house. Nirmal Singh brought *kassia* from his house and gave a blow with the same on the back side of the left shoulder of the complainant, as a result of which he fell down along with his niece. Then Nirmal Singh gave a blow with *kassia* on the head of his niece. Balwan Singh picked a stone lying at that place and gave a blow with the help thereof on the face of the complainant,

as a result of which his upper tooth came out and he received an injury on his lip. As a result of receipt of those injuries, he became unconscious. He and the other injured were admitted in the hospital by Sadhu Ram where they were medically examined by Dr. B.B.Lala, PW-7, who found one injury on the person of Bittu and three injuries on the person of the complainant. One of the injury on the person of the complainant was declared as grievous. On the receipt of information regarding this occurrence, ASI Anoop Singh, PW-5, went to the hospital and after obtaining the opinion of the doctor about the fitness of the complainant, recorded his statement Ex. PD. After making his endorsement Ex. PD/1 upon the same, sent that to the police, on the basis of which FIR Ex. PD/2 under Sections 323, 325/34 IPC was recorded against the petitioners. The *parna* of the complainant and the T-shirt of Bittu, stained with blood, were produced before the ASI, who converted those into a parcel and sealed the same with his seal 'AS'. The sealed parcel was taken into possession vide memo Ex. PW4/A. Sadhu Ram produced the tooth of the complainant before the ASI, which was converted into a separate parcel and was sealed with the same seal and that sealed parcel was taken into possession vide memo Ex. PW 4/B. The ASI went to the place of occurrence and after inspecting the same prepared rough site plan Ex. PW 5/A with correct marginal notes. After coming back to the police Station, ASI deposited the case property with the MHC. After completion of the investigation, challan was presented before learned Judicial Magistrate Ist Class, Sunam, for the trial of the petitioners for the aforesaid offences. From the documents sent along with the police report, learned Judicial Magistrate Ist Class found sufficient grounds for presuming that they committed offences under

Sections 324, 325/34 IPC. They were charged accordingly, to which they plead not guilty and claimed trial.

In the course of evidence, prosecution examined Dr. Vijay Goyal, PW-1, Dr. Ashwani Bhatia, PW-2, Ramniwas, PW-3, Sadhu Ram, PW-4, ASI Anoop Singh, PW-5, HC Ranjit Singh, PW-6 and Dr. B.B.Lala, PW-7.

After the close of the prosecution evidence, petitioners were examined and their statements were recorded under Section 313 Cr.P.C. All the incriminating circumstances, appearing against them in the prosecution evidence were put to them in order to enable them to explain the same. They denied those circumstances and pleaded their innocence and false implication. They were called upon to enter on their defence. They examined Ram Niwas, DW-1, Major Singh-DW-2 and Rajbir Singh, DW-3 in their defence.

After hearing the Assistant Public Prosecutor and learned defence counsel for the accused and going through the records of the case, learned Judicial Magistrate Ist Class convicted and sentenced the accused as aforesaid. They filed an appeal against the conviction and sentence but the same was dismissed by the learned Additional Sessions Judge, Sangrur, vide judgment dated 3.11.2001.

Notice of the revision was given to the State.

I have heard learned defence counsel for the petitioners and Senior Deputy Advocate General, Punjab for the State and have carefully gone through the records of the case.

At the time of arguments, learned defence counsel only challenged the order of sentence. He argued that the petitioners are not

previous convicts and keeping in view their age and other circumstances of the case, they should be given the benefit of probation and in the alternative, he prayed that while maintaining the sentence of fine, the sentence of imprisonment be reduced to already undergone by them.

On the other hand, it is submitted by Senior Deputy Advocate General, Punjab, that the trial court recorded the reasons for not granting the benefit of probation to the petitioners and there is no ground for releasing them on probation, when they had been convicted for causing grievous hurt to the complainant and Bittu. The sentence imposed, is already on the lower side and any order for reduction thereof will go against the theory of deterrent punishment.

The petitioners were convicted for the offence under Sections 323, 325/34 IPC. The former offence is punishable with imprisonment which may extend to one year and the latter offence is punishable with imprisonment up to seven years. Therefore, the case of the petitioners was to be dealt with under Section 360 Cr.P.C. which requires that any person convicted for an offence punishable with imprisonment for seven years or less, keeping in view his age, character and other antecedents and circumstances in which the offence was committed and if it is found expedient by the court, should be released on probation of good conduct instead of sentencing him at once to any punishment. Section 361 of the Code makes it necessary for the court to record special reasons for not dealing with the accused under that Section. Learned Judicial Magistrate Ist Class recorded in his order of sentence, the reasons for denying the benefit of probation to the petitioners. He took into account only the injuries so inflicted by them. It is pertinent to note that only simple injuries were

attributed to Nirmal Singh, who disclosed his age as 23 years. No previous conviction was proved against him. He stated before the trial court that he is a poor agriculturist and has got one small child. Keeping in view the nature of the injuries which were attributed to him and his position in life, the benefit of probation should have been granted to him. Accordingly, sentenced imposed upon him is set aside. He is ordered to be released on probation on his executing a bond in the sum of Rs. 5000/- with a surety in the like amount for a period of two years to the satisfaction of the trial court for keeping peace and be of good behavior in the meanwhile. The fine imposed upon him shall be treated as costs of the prosecution.

The grievous hurt was caused by Balwan Singh-petitioner. As a result of the blow given by him, not only one of the tooth of the complainant was uprooted but he received corresponding injuries on his lips also. No illegality is found in the order of the trial court in sentencing him for having caused such an injury. There is no ground for interfering with that part of the order and the sentence so imposed upon this petitioner is upheld.

The revision is disposed of accordingly.

(GURDEV SINGH)
JUDGE

December 07, 2009
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